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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRYANT R. BRITT, Plaintiff-Appellant, vs. SIMI VALLEY UNIFIED SCHOOL DISTRICT: John W. Duncan; George Hawkins; Robert Marcus; Allen Jacobs; Kenneth Ashton; Frederick Riess; Viola Brooks; Lewis Roth; Stephen Hogg; Sandra Binns; Helen E. Carrico; and David McCamy Defendants-Appellees.	No. 81-5284 D.C. 877-4091-WPG(K) MEMORANDUM

Submitted: March 1, 1982
Decided: , 1982

Appeal from the United States District Court
for the Central District of California
District Judge William P. Gray, Presiding

Before: WRIGHT, ALARCON and REINHARDT, Circuit Judges

Bryant Britt was employed as a tenured science teacher by the Simi Valley, California Unified School District from 1964 to 1975. During that time, a number of complaints concerning Britt's behavior were lodged by students, parents, teachers and administrators. After several meetings between Britt and the school's administrators, the school district issued a "Notice of Unprofessional Conduct and Incompetency" on December 17, 1974.

On April 29, 1975 the school board notified Britt that it would consider his dismissal at its next meeting and that he could attend with counsel or a union representative. Britt appeared and the board voted to dismiss him. He was given notice that the dismissal would take effect in 30 days unless he petitioned for a review hearing. Britt requested a hearing, and one was set for July 3, 1975 before a three-person panel.

Britt resigned his position on June 13, 1975. On November 1, 1977 he sued the school district and its officials, seeking relief under several sections of the Civil Rights Act, the U.S. Constitution and various California statutes. The defendants moved to dismiss for failure to state a claim upon which relief could be granted. Britt responded with an ambiguous "Notice of Plaintiff that he will not Oppose Defendant's Motion to Dismiss his Complaint."

On December 17, 1980, a Magistrate's Report and Recommendation concluded that Britt's decision to resign and terminate the administrative proceedings foreclosed a Civil Rights Act suit. The parties were given 10 days to file objections. Britt did not respond, and the suit was dismissed on March 5, 1981.

On appeal Britt notes correctly that several Courts of Appeals have held that exhaustion of state administrative remedies is not required before bringing a civil rights suit. See generally, Hochman v. Bd. of Ed. of the City of Newark, 534 F.2d 1094, 1097 (3d Cir. 1976). This court, however, has held that exhaustion is required where a teacher receives notice of dismissal for a future date and adequate administrative remedies are available to forestall the depri tion of his or her civil rights. Correa v. Nampa School Dist. No. 131, 645 F.2d 814 (9th Cir. 1981); Bignall v. Nort Idaho College, 538 F.2d 243 (9th Cir. 1976); Whitner v. Davi [illegible] F.2d 24, 28-29 (9th Cir. 1969).

The review panel had authority to set aside Britt's pending dismissal but Britt resigned before the scheduled date of review. He did not challenge the adequacy of the review procedure in the district court and we find no

compelling reason to consider it for the first time on appeal.

The judgment is AFFIRMED.